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**Of Counsel:**  
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**Washington, D.C. 20036-5803**

February 6, 2006

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc., Inc.  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

**RECEIVED**

FEB - 6 2006

Federal Communications Commission  
Office of Secretary

In re: WT Docket No. 02-55  
ESMR Election – MS Airwaves, Inc.

Dear Ms. Dortch:

Transmitted herewith for association with the above-referenced docket are copies of an election to relocate the 800 MHz licenses identified herein to the new ESMR portion of the 800 MHz band submitted to the 800 MHz Transition Administrator on behalf of MS Airwaves, Inc.

Please direct any questions or correspondence concerning this matter to the undersigned.

Very truly yours,



Robert J. Keller  
Counsel for MS Airwaves, Inc.

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JAN 20 2006

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February 6, 2006

800 MHz Transition Administrator, LLC  
c/o Steve Lederman  
Squire, Sanders & Dempsey L.L.P.  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 407  
Washington, D.C. 20044-0407

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FEB - 6 2006

Federal Communications Commission  
Office of Secretary

In re: WT Docket No. 02-55  
MS Airwaves, Inc.  
Election to Relocate Incumbent 800 MHz Licenses to the ESMR Band

Dear Mr. Lederman:

Pursuant to Federal Communication Commission ("FCC") *Memorandum Opinion and Order* (FCC 05-174; released October 5, 2005), and the January 11, 2006, Press Release of the Transition Administrator ("TA"), MS Airwaves, Inc. ("MSA"), to the extent required, hereby gives notice of its election to relocate the 800 MHz licenses identified herein to the new ESMR portion of the 800 MHz band.

Attachment A hereto is a list of the call signs subject to this election.<sup>1</sup> As of November 22, 2004, the channels that are the subject of this election were operating in a qualified "800 MHz Cellular System" mode (as defined for these purposes) by virtue of their incorporation into the iDen system being operated in the Los Angeles area by Nextel. Specifically, pursuant to short spacing agreements and spectrum lease agreements with Nextel, these channels have been incorporated into the iDen system operated by Nextel.<sup>2</sup>

Insofar as the spectrum authorized under these licenses is incorporated into the Nextel iDen system by MSA's contractual consent, MSA submits that it is already covered under the prior election by Nextel.<sup>3</sup> This notice is being filed out of an abundance of caution.

By making this spectrum available for incorporation into a qualified cellular system through contractual arrangements, MSA is entitled to be credited with such cellular configuration for 800 MHz re-configuration purposes. The MSA authorizations, but for the contractual

<sup>1</sup> As to those call signs that are subject to the enforcement proceedings in WT Docket No. 97-56, this election is subject to and conditioned upon the final Commission resolution of those proceedings.

<sup>2</sup> Pursuant to several short-spacing agreements and spectrum lease agreements, Nextel has incorporated a number of 800 MHz channels licensed by MSA into its iDen system. In the case of the spectrum lease agreements, Nextel's iDen operations are undertaken under the auspices of MSA's licenses. In the case of the short-spacing agreements, MSA retains its licenses, but is precluded from operating them in a manner that would interfere with Nextel's iDen operations.

<sup>3</sup> See the January 21, 2005, ESMR election notice filed by Nextel Partners, Inc.

ESMR Election  
MS Airwaves, Inc.  
February 6, 2006  
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arrangements with Nextel, currently stand as encumbrances to Nextel's geographic authorization. MSA seeks to be relocated to the new ESMR band in such a manner that Nextel would have the same encumbrances as currently applies in the lower portion of the band. In other words, MSA's relocated channels would encumber the Nextel system no more and no less than they do now. This is fully consistent with the letter and the spirit of the 800 MHz reconfiguration plan, in that existing 800 MHz licensees are only entitled to "comparable" facilities.

MSA understands and accepts that, in the event the contractual arrangements with Nextel are terminated for any reason and the unfettered use of the spectrum reverts back to MSA, it would be obligated to establish its own fully compliant ESMR system. MSA would, in that event, establish a fully compliant ESMR system on its authorized spectrum within the composite footprint of its existing authorization. MSA further understands that it is not be entitled to, and it does not seek, any compensation for facilities necessary to satisfy this obligation. It seeks only applicable transactional costs associated with relocation to the ESMR band.

Please direct any questions or correspondence concerning this matter to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Keller", with a stylized flourish at the end.

Robert J. Keller  
Counsel for MS Airwaves, Inc.

ESMR Election  
MS Airwaves, Inc.  
February 6, 2006

**ATTACHMENT A**

<u>Call Sign</u>	<u>Svc</u>	<u>Exp. Date*</u>
KNBT299	GX	04/22/1999
KRU576	GX	04/22/1999
WNPY680	GX	02/24/1999
WNWB334	GX	04/20/1998
WNXL471	GX	07/05/1999
WNYR424	GX	04/22/1998
WPAD685	GX	04/22/1998
WPCA891	GX	04/26/1998
WPCG780	GX	03/01/1999
WPCZ354	GX	06/30/1999
WPDB603	GX	02/04/1999
WPFF529	GX	07/05/1999
WPFH460	GX	07/13/1999

\* As to those licenses showing past expiration dates, timely renewal applications are pending.

**CERTIFICATION**

I, Marc D. Sobel, hereby certify on this 6th day of February 2006, under penalty of perjury, that the factual statements set forth in the foregoing letter of legal counsel regarding election of relocation to the ESMR portion of the 800 MHz band are true and correct of my personal knowledge and are made in good faith.

  
\_\_\_\_\_  
Marc D. Sobel

Dated: February 6, 2006